



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0055 FRL-10006-83-Region 5]

Air Plan Approval; Ohio; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to remove the air pollution nuisance rule from the Ohio State Implementation Plan (SIP) using the Clean Air Act (CAA) error correction provision. EPA has determined that this rule was not relied upon by Ohio to demonstrate attainment or maintenance of any National Ambient Air Quality Standards (NAAQS). If EPA takes final action consistent with this proposal, the nuisance provision will no longer be part of the Ohio SIP.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0055 at <http://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may

publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, rineheart.rachel@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Why is EPA proposing to remove Ohio's nuisance rule from the SIP?

The CAA was first enacted in 1970. Section 110(a)(1) required each state to submit to EPA SIPs that provided for the implementation, maintenance and enforcement of the NAAQS. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to EPA for incorporation into the SIP to fulfill the new Federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the CAA. Due to time and resource constraints, EPA's review of these submittals focused primarily on the rules addressing the new substantive requirements of the CAA, and we approved many other elements into the SIP with minimal review. We now recognize that some of these elements are appropriate for state and local agencies to adopt and implement, but not as federally enforceable SIP requirements. These include rules that prohibit air pollution nuisances. Such rules generally have no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the NAAQS.

II. What is EPA's authority to correct errors in SIP rulemakings?

Section 110(k) (6) of the CAA provides EPA with authority to make corrections to prior SIP actions that are subsequently found to be in error in the same manner as the prior action, and to do so without requiring any further submission from the state. This determination and the basis must be provided to the state and the public.

III. Which rule is EPA proposing to remove?

Ohio rule AP-2-07, "Air pollution nuisances prohibited," was approved by EPA into the Ohio SIP on April 15, 1974. See 39 FR 13542. Subsequently, Ohio amended and renumbered the rule as OAC 3745-15-07 and submitted it as a revision to the SIP. EPA approved the amended provision on August 13, 1984. See 49 FR 32182. OAC 3745-15-07 prohibits the "emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property."

EPA has reviewed the docket files regarding Ohio's nuisance rule and found no information indicating that the state has relied on, or ever intended to rely on, this rule for attainment

or maintenance of any NAAQS.¹ Additionally, the Ohio Environmental Protection Agency has confirmed that they have not relied on, and did not intend to rely on, this rule for attainment or maintenance of any NAAQS.

IV. What Action is EPA Taking?

EPA is proposing to remove Ohio's nuisance provision from the Ohio SIP because it does not have a reasonable connection to the attainment and maintenance of the NAAQS. Consequently, EPA finds that its prior approval of OAC 3745-15-07 into the Ohio SIP was in error. To correct this error, EPA is proposing to remove OAC 3745-15-07 from the approved Ohio SIP pursuant to section 110(k)(6) of the CAA and to codify this removal by revising the appropriate paragraph under 40 CFR part 52, subpart KK, §52.1870 (Identification of Plan).

V. Incorporation by Reference.

In this document, EPA is proposing to amend regulatory text that includes incorporation by reference. EPA is proposing to remove 3745-15-07 "Air Pollution Nuisances Prohibited" of the EPA-Approved Ohio Regulations from the Ohio State Implementation Plan, which is incorporated by reference in accordance with the

¹ EPA has taken similar actions in a number of other states. See, e.g., Approval and Promulgation of Implementation Plans; Michigan: Correction, 64 FR 7790 (February 17, 1999).

requirements of 1 CFR part 51. EPA has made, and will continue to make the State Implementation Plan generally available through www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-5 and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: March 9, 2020.

Kurt A. Thiede,
Regional Administrator, Region 5.

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